

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Reexamination of: U.S. Patent No. 6,652,879 to Opiem Confirmation No.: 1760
Reexamination Control No.: 90/010,734 Art Unit: 3991
Filed: February 3, 2010 Examiner: Kunz, Gary L.
For: FLAVORED GELATIN CAPSULES AND METHOD OF MANUFACTURE Attorney Docket No.: 12098-033-999

DECLARATION OF JOAR OPHEIM UNDER 37 C.F.R. § 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I, Joar Opheim, hereby state and declare as follows:

1. I am a citizen of Norway, residing at 652 Saint Andrews Drive, Aptos CA 95003.
2. I am managing partner of Nordic Naturals, Inc. ("Nordic Naturals") of Watsonville, CA.
3. I am the inventor of the above-identified patent.
4. I am familiar with the above-identified patent and the claims thereof assigned to Nordic Naturals. These claims are directed to flavored gelatin capsules that can be useful, for example, in improving the palatability of fish oil supplements. Nordic Naturals has used the patented flavored gelatin capsules in a variety of dietary supplement products discussed herein, including strawberry, peach and lemon flavored fish oil gelatin capsules.
5. I am familiar with the amount of units sold and yearly sales figures for Nordic Naturals products, including fish oil supplements comprising the flavored gelatin capsules claimed in the above referenced patent.
6. Nordic Naturals' fish oil supplements comprising the claimed flavored gelatin capsules have seen yearly increases in gross revenue from sales since the introduction of the products in 2003 as shown in Exhibit A, attached herewith.

7. In 2003, gross revenue from sales of Nordic Naturals' fish oil supplements comprising the claimed gelatin capsules were approximately three fold greater than gross revenue from sales of Nordic Naturals' unflavored counterpart products. In 2009, gross revenue from sales of Nordic Naturals' fish oil supplements comprising the claimed flavored gelatin capsules were approximately nineteen fold greater than gross revenue from sales of Nordic Naturals' unflavored counterpart products. See Exhibit A. Thus, there was a significantly greater growth in gross revenue from sales of Nordic Naturals' fish oil supplements comprising the claimed flavored gelatin capsules from 2003-2009 compared to gross revenue from sales of Nordic Naturals' unflavored fish oil supplements for the same time period.

8. Since Nordic Naturals' first introduced fish oil supplements comprising the claimed gelatin capsules, other companies have introduced similar flavored gelatin encapsulated fish oil supplements in an attempt to gain a market share. These companies include, but are not limited to, Barlean's, Bioriginal Food and Science Corp., Capsuline, Calson Laboratories, Go3, Health from the Sun, Kirkman Labs, Metagenics, Nature's Plus, Pure Encapsulations, Purity Products, Source Naturals, Spectrum, and Vital Nutrients.

9. It is my belief that the commercial success of Nordic Naturals' fish oil supplements comprising the claimed flavored gelatin capsules is directly derived from the claimed flavored gelatin capsules and is not the result of a substantial increase or shift in advertising, consumption by purchasers normally tied to Nordic Naturals, or other business events extraneous to the merits of the flavored gelatin capsule fish oil products. Approximately one third of Nordic Naturals' advertising expenses for its flavored gelatin capsule fish oil products in 2008 and 2009 was directed to providing potential consumers with samples of the capsules. Thus, a significant portion of Nordic Naturals' advertising expenses was tied to providing potential consumers with an opportunity to taste the flavored gelatin capsule fish oil products. These opportunities have resulted, in significant part, in the increased sales of the flavored capsule fish oil products discussed above.

10. I hereby declare that all statements made herein of my own knowledge are true, that all statements made on information and belief are believed to be true, and that these statements were

made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

August 16, 2010
DATE

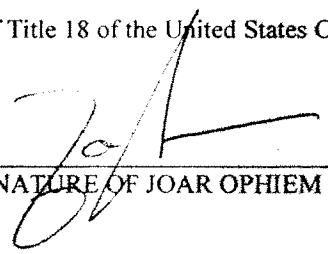

SIGNATURE OF JOAR OPHIEM

Exhibit A

Graph of Sales of Nordic Naturals' Flavored v. Unflavored Fish Oil Supplements

